

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 27 1996

In the Matter of)
)
800 Data Base Access Tariffs and the)
)
800 Service Management System Tariff)
)
and)
)
Provision of 800 Services)

CC Docket No. 93-129

Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

CC Docket 86-10

BELL ATLANTIC¹ PETITION FOR RECONSIDERATION

The Commission should reconsider its decision to disallow certain exogenous costs included in Bell Atlantic's 800 Data Base tariff. Rather than evaluating the specific costs that Bell Atlantic incurred to add a regional data base to its network, the Commission based its disallowance on the costs incurred by *other* companies. Such a disallowance is inconsistent with the Commission's prior authorization of exogenous treatment. Moreover, by penalizing Bell Atlantic for its use of more advanced technology, the Commission violates its own policies as well as those in the 1996 Telecommunications Act. Consequently, the Commission should reconsider its decision, and permit Bell Atlantic to recover the specific costs it incurred to deploy its data base, as well as the costs it incurred for the links and ports used to provide 800 service.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

No. of Copies rec'd
List ABCDE

029

I. The Commission Should Reconsider Its Disallowance of Regional Data Base Costs

In calculating Bell Atlantic's exogenous costs for its regional data base, the Commission completely rejects any reliance on Bell Atlantic's *own* costs. Instead, the Commission bases its allowance on the average costs submitted for four *other* regional Bell operating companies.² This is inconsistent with the Commission's grant of exogenous treatment in 1993. Then, the Commission concluded that "it is appropriate to allow the LECs to treat as exogenous the reasonable costs *they* incurred specifically for the implementation and operation of the basic 800 data base service required by Commission orders."³ Now, the Commission denies Bell Atlantic recovery of the costs it incurred, and instead limits recovery to the costs that other companies incurred.

The Commission justifies rejecting Bell Atlantic-specific cost data in two ways: "[b]ecause Bell Atlantic has both the highest total regional data base investment and has shown large increases in investment at successive stages of [the Commission's] investigation."⁴ But neither of these rationales even address the legitimacy of the cost showing relied on by Bell Atlantic. Moreover, by disallowing the higher costs associated with the deployment of more advanced technology, the Commission wrongly penalizes Bell Atlantic for its technology choice.

The Commission's reliance on the difference between Bell Atlantic's costs and those of other carriers is misplaced. Bell Atlantic's cost filing is based on what it spent to deploy the

² ***800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services***, CC Docket Nos. 93-129, 86-10, Report and Order, ¶ 102 (rel. Oct. 28, 1996) ("Report and Order").

³ ***Provision of Access for 800 Service***, 8 FCC Rcd 907, 911 (1993) (emphasis added).

⁴ Report and Order at ¶ 101.

regional data base. In contrast to other carriers, Bell Atlantic's network includes a more advanced data base platform that relies on IBM RISC 6000 Intelligent Network ("IN") technology.⁵ This technology reduces up keep problems and is more adaptable to the provision of future 800 data base services. In contrast, the technology used by other carriers is based on a DEC technology that has been discontinued by the manufacturer. As a result, comparison to the less advanced technologies in the networks of other companies is unreasonable. Moreover, limiting Bell Atlantic's recovery to other companies' costs penalizes Bell Atlantic for its deployment of more advanced technology. This is directly contrary to Commission policy and the Act's admonition that the Commission must use its regulatory controls to "encourage the deployment" of such "advanced telecommunications capability."⁶

The Commission is correct that Bell Atlantic's revised data base cost support showed higher costs than did its original cost filing. As the Commission recognized, Bell Atlantic's original filing was based on a proprietary cost model. Almost a year after the original filing, the Commission rejected use of this cost model, which relied on projections of future costs, and required Bell Atlantic to refile its cost data on a different basis.⁷ Bell Atlantic complied and filed

⁵ Unlike 500 service, which relies on Bell Atlantic's generic advanced intelligent network platform, 800 service uses its own platform. *See Bell Atlantic Tariff FCC No. 1*, Transmittal No. 725, Bell Atlantic Reply to Petitions at 3 (filed Jan. 9, 1995).

⁶ Telecommunications Act of 1996, P.L. 104-104, Section 706(a).

⁷ *See 800 Data Base Access Tariffs and the 800 Service Management System Tariff*, 9 FCC Rcd 715 (Com Car. Bur. 1994).

a completely new set of cost data based on what it actually spent to deploy its data base, just as the Commission directed.⁸

Nowhere in the Report and Order does the Commission undertake any critical evaluation of that new cost data.⁹ Instead the Commission's rejects Bell Atlantic's submission merely because it shows costs to be higher than the original cost study results -- a study that the Commission had already concluded could not be used to evaluate Bell Atlantic's tariff. In fact, the revised results were quite reasonable. While the original cost filing was based on a cost projection model, the supplemental filing was a "top down" reflection of what Bell Atlantic actually spent.¹⁰ Because the actual costs were higher than the model's projection, Bell Atlantic's revised costs showed an increase over the original filing.

Regardless, any criticism based on the increase in costs in the revised filing should be irrelevant because Bell Atlantic did not adjust its rates or exogenous costs to reflect the higher costs in the revision.¹¹ Because Bell Atlantic's rates were fully justified by *either* cost submission, the Commission had no basis to rely on the difference between the two submissions to reject all of Bell Atlantic's cost support. But even if that were not the case, it would still be

⁸ ***800 Data Base Access Tariffs and the 800 Service Management System Tariff***, CC Docket 93-129, Supplement to Direct Case of Bell Atlantic, Alternative Cost Support (filed Mar. 15, 1994) ("Supplemental Direct Case").

⁹ Ironically, the Commission does evaluate and reject Ameritech's revised cost submission, yet the Commission authorizes higher exogenous costs for Ameritech than for Bell Atlantic. *See* Report and Order, ¶¶ 90-91.

¹⁰ ***See 800 Data Base Access Tariffs and the 800 Service Management System Tariff***, CC Docket 93-129, Response to Oppositions to Direct Case of Bell Atlantic, Appendix A at 6 (filed May 5, 1994) ("Response to Oppositions").

¹¹ *See* Supplemental Direct Case at 2.

illogical to rely on the difference between the two Bell Atlantic cost submissions as justification to impose costs that are lower than *either* submission.

Because the Commission's stated reasons for rejecting of Bell Atlantic's cost support do not justify such rejection, the Commission should reconsider its decision. Bell Atlantic is entitled to recover the reasonable costs it actually expends to provide 800 service, and those costs are reflected in the record.

II. The Commission Should Reconsider Its Disallowance of Port and Link Costs

The Commission's decision to deny recovery of the costs incurred for certain links and ports used to provide 800 service suffers from the same flaw.

For example, the Commission denied recovery of the costs for the links between the local and regional transfer points.¹² According to the order, such links "provide many services" other than 800 service.¹³ This is a factual mistake that simply does not square with the record. The Commission bases its conclusion on GTE's explanation of GTE's network.¹⁴ The record is clear, however, that for Bell Atlantic, almost all of the usage of these links is associated with 800 service. In fact, approximately 95% of the traffic carried over these links are 800 queries.¹⁵ The order, however, simply fails to take into account the actual usage of these links.

¹² Report and Order, ¶ 115.

¹³ *Id.*

¹⁴ *Id.* at n. 215.

¹⁵ *See* Supplemental Direct Case at 4; Supplemental Direct Case at Workpaper 1; Response to Oppositions at 2, n. 6. The Commission acknowledges the Bell Atlantic record on this point, but it never addresses that fact when it makes its disallowance. *Compare* Report and Order, ¶ 111 *with* Report and Order, ¶ 115.

Similarly, the Commission should reconsider its decision to deny recovery of the port costs associated with the links between Bell Atlantic's local and regional transfer points.¹⁶ If the links almost exclusively carry 800 query traffic, the associated ports must have the same usage. But again, the order fails to take the actual usage of the ports into account.¹⁷

Finally, the Commission also erred in its decision to deny recovery of the port costs between the regional transfer point and the regional data base.¹⁸ The Commission recognized that the costs of the associated link were "specifically incurred to provide 800 data base query service."¹⁹ If the link between two ports exclusively carries such traffic, the ports must carry the same traffic. The Commission's failure to allow recovery of the port costs is inconsistent with its own factual conclusion.

Conclusion

As set forth above, the Commission should reconsider its decision and allow Bell Atlantic to recover the costs it incurred for its regional data base, the link between the local and regional transfer points, and the ports on the regional transfer point and regional data base.

¹⁶ Report and Order, ¶ 116.

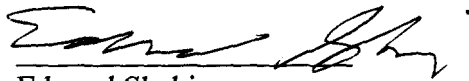
¹⁷ The order mistakenly cites Bell Atlantic's direct case to support its claim of multi-service usage of the ports. The cited filing addresses the local and regional transfer points generally. The record is clear, however, that the specific ports used for 800 service were used almost exclusively for that purpose.

¹⁸ Report and Order, ¶ 110.

¹⁹ Report and Order, ¶ 108.

Edward D. Young, III
Michael E. Glover
Of Counsel

Respectfully submitted,


Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

November 27, 1996